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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SKYWEST PILOTS ALPA ORGANIZING
COMMITTEE, *et al.*,

Plaintiffs,

vs.

SKYWEST AIRLINES, INC.,

Defendant.

CASE No. C-07-2688 CRB

**[PROPOSED] ORDER REGARDING
BOND**

Date: August 2, 2007
Time: 9:30 a.m.
Place: Courtroom 8, 19th Floor

On June 27, 2007, the Court issued a preliminary injunction enjoining Defendant SkyWest Airlines, Inc. ("SkyWest") from interfering with the right of SkyWest pilots to engage in expressive, organizing activity pursuant to the Railway Labor Act. Currently before the Court is Defendant's Motion regarding the appropriate injunction bond.

The Court finds that the Norris-LaGuardia Act ("NLGA") does not apply to this case. *See Machinists v. TWA*, 654 F.Supp. 447, 456 (D.D.C. 1987) (Section 7 "inapplicable . . . where a union seeks to compel an employer to comply with the commands of the [RLA]"), *aff'd in part, rev'd in part on other grounds*, 839 F.2d 809 (D.C. Cir. 1988); *see also Textile Workers v. Lincoln Mills*,

1 353 U.S. 448, 458 (1957) (holding procedural requirements “inapposite”); *Local 205 v. G.E.*, 233
2 F.2d 85, 92 (1st Cir. 1956); *Smith v. Bowers*, 337 F.Supp.2d 576, 585 (S.D.N.Y. 2004); *see*
3 *generally Va. Ry. v. Sys. Fed.*, 300 U.S. 515, 562-63 (1937) (NLGA should not be applied to
4 frustrate RLA’s purpose); *Bhd. of R.R. Tr. v. Chi. River R.R.*, 353 U.S. 30, 40 (1957) (same). As a
5 result, the posting of security for the preliminary injunction in this case is governed by Federal Rule
6 of Civil Procedure 65(c), and Rule 65(c)’s bond requirement may be waived. In this case, waiver of
7 a bond is appropriate for each of the following independent reasons: First, Plaintiffs have a strong
8 likelihood of success on the merits. *Scherr v. Volpe*, 466 F.2d 1027, 1035 (7th Cir. 1972). Second,
9 there is no realistic likelihood of harm to Defendant from enjoining its conduct. *Jorgensen v.*
10 *Cassiday*, 320 F.3d 906, 919 (9th Cir. 1996). And third, the “equities of potential hardships to the
11 parties” weighs in favor of Plaintiffs. *Temple Univ. v. White*, 941 F.2d 201, 220 (3d Cir. 1991).

12 The Court further finds that even if the NLGA applies, no bond is required. Section 7 of the
13 NLGA provides for a bond “to recompense those enjoined for any loss, expense, or damage caused
14 by *the improvident or erroneous issuance* of such order or injunction.” 29 U.S.C. §107 (emphasis
15 added). The only purpose of a preliminary injunction bond is to indemnify a defendant against
16 expenses it incurs in challenging and overturning the preliminary injunction. Thus, the bond
17 available under Section 7 is limited to SkyWest’s expenses for any “attorney’s fees on appeal.”
18 *Chauffeurs, Teamsters and Helpers Local Union No. 414 v. Food Marketing Corp.*, 1986 WL
19 15724, *9 (N.D. Ind. Oct. 3, 1986) (“FMC”); *see also United Steel Workers of America, AFL-CIO-*
20 *CLC v. Cooper-Standard Auto. of Bowling Green*, 2004 WL 2599132, *8 (N.D. Ind. Nov. 2, 2004)
21 (holding that pursuant to Section 7 of NLGA, “Defendants’ potential expense in determining
22 whether this Court has erred in deciding . . . that the conditions for the issuance of an injunction
23 exist[] is limited to the cost of pursuing further legal proceedings”). SkyWest has not appealed the
24 preliminary injunction. As a result, SkyWest will not incur any expenses in “establish[ing] the
25 erroneous issuance of the [preliminary] injunction.” *Id.* No bond is required in this case because
26 SkyWest has chosen not to incur the only expenses that a Section 7 bond would cover.

27 Having considered the papers filed concerning Defendant’s Motion Regarding the
28 Appropriate Injunction Bond and based on the record in this case, it is hereby ordered that

1 Defendant's motion to set the bond at \$700,000 is DENIED and the Court hereby orders that no
2 bond is required in this case.

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4 Date: _____
5
6 Hon. Charles R. Breyer
7 United States District Judge
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